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menced, and such being the case a suit brought in a county where no action could be properly commenced, the defendant waived the question of venue by pleading to the merits instead of pleading in abatement. Under GEN. ST. 1866, c. 62, § 10, providing that actions for divorce shall be commenced in the county where plaintiff resides, the complaint need not show in what county plaintiff resides. *Young v. Young*, 18 Minn. 90. See also *Grant v. Grant*, 49 Mo. App. 3.

EVIDENCE—DYING DECLARATION.—In a trial for murder a witness testified that just before the deceased died he said that the defendant had shot him for nothing. To this part of the deceased's dying declaration the defendant objected on the ground that it was an opinion of the deceased and hence incompetent. *Held*, that the dying declaration should be admitted as a whole. *State v. Peace* (1908), — La. —, 47 South. 28.

The present case is in accord with previous cases decided in the same state. *State v. Trivas*, 32 La. Ann. 1086; *State v. Carter*, 106 La. 408. Its reasoning, however, is opposed to the great weight of authority which holds that those parts of a dying declaration which consist of matters of opinion are inadmissible. 1 GREENLEAF, EVIDENCE (16 Ed.), § 159; 4 ENCYC. EVID. 993. Mr. WIGMORE says that the opinion rule has no application to dying declarations, but nevertheless he admits that courts in general accept the rule as applicable. 2 WIGMORE, EVIDENCE, § 1447. Some courts, however, while professedly following the above rule, have reached the same result as the present case by holding that the words, "he shot me for nothing," or other declarations almost identical, were expressions of fact and not of opinion. *Sullivan v. State*, 102 Ala. 135; *Gerald v. State*, 128 Ala. 6; *State v. Lee*, 58 S. C. 335; *Boyle v. State*, 105 Ind. 469. On the other hand, it has been held directly opposed to the present decision, that dying declarations practically identical with those in the preceding cases were expressions of opinion and not admissible. *State v. Sale*, 119 Ia. 1; *Collins v. Commonwealth*, 12 Bush. 271; *Jones v. Commonwealth* (Ky.), 46 S. W. 217.

EVIDENCE—OTHER OFFENSES—TO SHOW INTENT.—Prosecution for perjury. Defendant appeared as a witness on the final proof of a homestead claim, and swore falsely that the person for whom he appeared had lived continually on the land for the required time. At the trial evidence was admitted that some time before the defendant had sworn falsely on the final proof of witness's homestead claim, in regard to the length of time witness had lived on the land. *Held*, that such evidence was admissible to show knowledge, design and system on the defendant's part in furnishing evidence in support of fraudulent land claims. *Barnard v. United States* (1908), — C. C. A., 9th Cir., 162 Fed. 618.

Crimes committed at a former time cannot be admitted in evidence to show that the person who committed them would be likely to have committed the crime in question, but where it is necessary to prove the defendant's intent or knowledge, then evidence of other similar crimes may be introduced, provided they tend to show the existence of the intent or knowledge

on the part of the accused at the time of the commission of the alleged crime. 7 AM. & ENG. ENCYC. LAW, Ed. 1, p. 61. In trials for uttering counterfeit coins evidence of the utterance of similar coins to other persons at previous times is admitted. *State v. McAllister*, 24 Me. 139; *Reed v. State*, 15 Ohio 217; *Commonwealth v. Bigelow*, 49 Mass. 235. And in trials for forgery, evidence of the passage of similar forged papers by the defendant is admissible to prove guilty knowledge. *Commonwealth v. Miller*, 57 Mass. 243; *Steele v. People*, 45 Ill. 152. In *Reg. v. Oddy*, 5 Cox C. C. 210, the court stated that the rule regarding the admission of such evidence in counterfeiting cases went a great way and was not to be applied to the criminal law generally, and in the decision in *People v. Corbin*, 56 N. Y. 363, it is stated that the cases in which offenses other than those charged in the indictment may be proved for the purpose of showing guilty knowledge or intent are very few. A leading case is *State v. Lapage*, 57 N. H. 245. Here on a trial for murder the prosecution sought to show that the crime was committed in perpetrating or attempting to perpetrate rape. Evidence was admitted that the defendant had committed rape in Canada, some years before, under similar circumstances. Although the trial judge in his charge to the jury carefully limited the evidence to the proof of a criminal intent, the higher court held that the evidence was inadmissible. It was held in *Commonwealth v. Coe*, 115 Mass. 481, and *Commonwealth v. Jackson*, 132 Mass. 16, both prosecutions for cheating by false pretences, that evidence of other similar false pretences was not admissible, though it was recognized that there are occasions when evidence of one crime should be admitted on the trial of another. On the other hand, cases have gone to great lengths in admitting such testimony. At a trial of a mother for murdering her child by poison, evidence was admitted that two other children of hers and a lodger had previously died by poison. *Reg. v. Cotton*, 12 Cox C. C. 400. At a trial for murdering her child by suffocation, evidence was received tending to show the previous death of her other children at early ages. *Reg. v. Roden*, 12 Cox C. C. 630. And in *Reg. v. Garner*, 3 F. & F. 681, where the charge was murder of the mother by poison, evidence was received that his first wife died of poison. In *People v. Seaman*, 107 Mich. 348, the question under discussion was considered at some length. The charge was manslaughter for committing an abortion. It was held that evidence that the defendant had performed other abortions in the same house was admissible to repel the inference that the cause was accidental and to show motive. Numerous cases are cited in support of this view. Whatever may be the weight of authority, it is evident that, since such evidence must tend to prejudice the jury to some extent at least, it should be admitted only with great caution.

EVIDENCE—PROFERT OF A PERSON.—In a criminal prosecution of a negro for adultery with an alleged white woman, *held* permissible for the state to make profert of the woman to the jury in order that they might determine whether or not she was a white woman. *Jones v. State* (1908), — Ala. —, 47 South. 100.